

REMARKS

The Examiner's remarks have been carefully considered and the prior patents cited and applied have been carefully studied.

Claims 1, 8-11, 13, 20-25 and 30-45 remain in this application.

Claims 43-45 stand allowed.

Claims 1, 8, 9, 13, 20, 21 and 35 have been amended without acquiescing to the pertinency of the prior patents or the pertinency of the Examiner's comment that certain words are not in the original application. These claims have been amended to more clearly define applicant's invention and to eliminate possible ambiguities.

Reconsideration of the Examiner's rejections of certain claims because of the inclusion of "a single step" and "one piece" in the claims. Applicant submits that "integral" and "one piece" have the same meaning. Applicant is submitting herewith a copy of Page 990 of the The Random House Dictionary of the English Language Second Edition, Unabridged. The word "integral" is defined as "pertaining to or belonging as a part of the whole", "consisting or composed of parts that together constitute a whole", and "being entire, complete and whole." Applicant submits that these definitions of "integral" includes the expression "one piece" which the Examiner has objected to and should remain in the claims. Likewise, the words "a single step" means "simultaneously". Applicant is also submitting herewith a copy of Page 1784 of the same dictionary. The term "simultaneous" is defined as "existing occurring or operating at the same time and concurrent or together". Applicant submits that this definition of "simultaneous" includes the expression "a single step" that the Examiner has objected to. Applicant submits that this term should also remain in the claims. However, in order to expedite the prosecution of this application, applicant has deleted the expressions "one piece" and "single step" from the claims

without acquiescing to the Examiner's assertions that they are not in the original specification since applicant believes that "one piece" and "single step" is the same as "integral" and "simultaneous", respectively.

Claims 9-11 have been amended in order to remove all of the Examiner's objections thereto to include and the suggestions the Examiner made. It is believed that Claims 9-11 are now in condition for allowance and such action is respectfully requested.

Claims 20-35 are also amended in order to remove the Examiner's objections thereto. It is believed that these claims are now allowable and such action is respectfully requested. The Examiner will note that Claims 20-25 had previously been indicated as being allowable if Claim 20 were rewritten in allowable independent form.

Reconsideration of the rejection of the Claims 1, 8, 13 and 35 to 42 is respectfully requested.

Claims 1, 8 and 13 are directed to a vial having straight outer wall and a curved inner cavity with orienting means which extend outwardly from and integral with the outer wall of the vial body. The orienting means extend outwardly to permit the vial to be positioned in the level in the proper position and to prevent its rotation. The inner cavity is asymmetrically positioned with respect to its outer wall and has a single apex which is closer to the outer wall than the other parts of the cavity. The outer wall has a straight central axis and the inner cavity has a curved central axis which is spaced from the central axis of the outer wall. The axial diameter of the inner cavity is uniform throughout its length. Since the outer wall of the vial is straight but the inner cavity is asymmetrical the orienting means permits the vial to be placed at the proper place with the inner cavity at the proper location and prevents the incorrect placing of the vial in the level and the inadvertent rotation of the vial.

Claim 35 to 42 are directed to the method of making the vial in which the outer straight wall and the inner curved cavity are formed simultaneously. The Examiner will appreciate that first making a vial with a straight outer wall and thereafter forming the inner cavity is time consuming, expensive and may not result in identical vials. Applicant's invention is an inexpensive method of doing both simultaneously in one step and if insuring that all the vials made by the method are identical.

Johannson Sweden No. 148,436 shows a vial with an outer straight wall and an inner curved cavity. However, this patent does not disclose any orienting means nor does it disclose any method of making the vial. Hence, this patent does not anticipate.

Wright Patent No. 5,003,609 shows a vial in which the entire inner cavity is symmetrical and curved all around. The inner cavity does not have a single apex nor is it uniform in cross section throughout its length. The entire inner cavity is symmetrically circular throughout its length with the axis of the inner cavity being coextensive with and identical to the outer wall axis. The inner cavity of this prior patent is oblong or barrel shaped whereas the cavity of applicant's construction is in the shape of an arc. This patent does have and does not need orienting means to prevent rotation of the vial. Regardless of what rotational position the vial in this patent is placed does not matter since the inner cavity and outer wall are symmetrical their axes are coextensive with each other. What the Examiner labels a key in this patent is merely an extension of the circular outer wall that has no rotational orientation function.

Ours Patent No. 5,595,518 merely shows a mold for making a fin. It does not show a vial nor any structure that has an outer straight wall and a curved inner cavity. Hence, this patent does not anticipate.

The Examiner has suggested the combination of *Johannson* with *Wright* and has rejected claims 1, 8 and 13 as being rendered obvious by the combined references. Applicant submits that even when combined the resulting structure would still be different from applicant's invention and would not render applicant's invention obvious. The resulting structure of the combination suggested by the Examiner would still lack a vial having an orienting means (preferably in the form of a tab) which is integral with the vial. As indicated above, *Wright* merely shows a vial with no orienting means whatsoever to prevent rotation of the vial. Even when combined with the other reference the resulting structure would still produce a vial without orienting means to prevent rotation. This is quite different from applicant's structure which comprise a vial having integral orienting means to prevent rotation. Hence, the suggested combination of references would not render applicant's invention (as set forth in claim 1, 8 and 13) obvious.

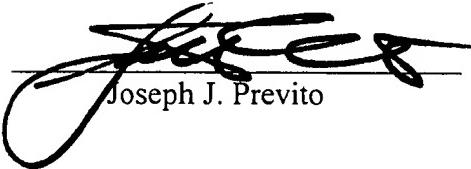
The Examiner has also suggested the combination of *Wright* with *Johannson* and *Ours* and has rejected claims 35-43 as being rendered obvious by the combined references. Applicant submits that even when combined the resulting method would still be different from applicant's invention and would not render applicant's invention obvious. The resulting method of the combined references would still lack the simultaneous formation in one step of a vial having an outer straight cylindrical configuration and an inner curved cavity. Nothing in the cited references, including the *Ours* patent, discloses this method. All that *Ours* discloses is the formation of a fin with curved outer and inner curved surfaces. It does not show the method of making a vial by simultaneously making the outer cylindrical wall and the inner curved cavity. The patents to *Wright* and *Johnannson* do not disclose any method of making a vial whatsoever. The Examiner states that the method steps would be met during the normal manufacturing process of "the devise stated above" but has cited no reference to show this normal

manufacturing process. All that the combination of references disclose is the formation of a fin having a curved outer surface and a curved inner cavity. Nothing in the cited references discloses or suggests the formation of a vial with an outer straight surface and a curved inner cavity in a single simultaneous step. Hence, the suggested combination of references would not render applicant's invention as set forth in claims 35-43 obvious.

Since none of the prior patents either alone or in combination with each other neither render applicant's invention obvious nor anticipate applicant's invention, allowance of the application is respectfully requested.

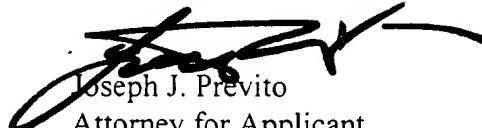
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I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on June 3, 2003.



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MARKED UP COPY OF CLAIMS SHOWING CHANGES MADE

1. (Three Times Amended) A vial comprising an outer wall, said outer wall being straight, [and] cylindrical and having a central axis, an inner cavity, said inner cavity being curved, and having a central axis which is curved and spaced away from the central axis of the outer wall, said inner cavity being curved in a substantially uniform arc having [an] a single apex, and having a uniform axial diameter throughout its length, opposed ends spaced from the apex and opposed spaced sides, planes tangent to said opposed spaced sides are at an angle of 90 degrees from the apex, the apex of the curved inner cavity being closer to the cylindrical outer wall of the vial than the opposed ends of the inner cavity, said inner cavity is substantially uniform in cross section throughout its length, planes tangent to the sides of the cavity are parallel to each other and at right angles to a plane tangent to said apex, one end of said cavity terminates in an end wall perpendicular to the said outer wall, said end wall having inner and outer faces parallel to each other, the other end of said cavity is open and wherein a cap is adapted to close the said open end, and orienting means which extend from and are integral [and one piece] with said outer walls to permit proper orientation and mounting of the vial in a level and to prevent rotation of the vial when mounted in a level, said orienting means extending outwardly away from said outer walls in a direction away from said inner cavity.

8. (Three Times Amended) The vial as set forth in claim 1 wherein said orienting means comprise a pair of keys which extend from and are integral [and one piece] with the outer wall of said vial adjacent said open end, said keys extending in opposite directions away from each other.

9. (Three Times Amended) A vial comprising an outer wall, said outer wall being straight, [and] cylindrical and having a central axis, an inner cavity, said inner cavity being curved, and having a central axis which is curved and spaced away from the central axis of the outer wall said inner cavity being curved in a substantially uniform arc having [an] a single apex, and having a uniform axial diameter throughout its length, opposed ends spaced from the apex and opposed spaced sides, planes tangent to said opposed edges are at an angle of 90 degrees from the apex, the apex of the curved inner cavity is closer to the cylindrical outer wall of the vial than the opposed ends of the inner cavity, the said cavity is substantially uniform in cross section throughout its length, planes tangent to the sides of the cavity are parallel to each other and at right angles to a plane tangent to said apex, one end of said cavity terminates in an end wall, the other end of said cavity [it] is open and wherein a cap is adapted to close the said open end, a pair of keys extend from the outer wall of said vial adjacent said open end, said keys extending in opposite directions from each other, each of said keys have edge and side walls at right angles to each other, each of said walls being tangent to the outer wall of the vial with one of said walls being parallel to the plane tangent to the apex of the cavity.

13. (Three Times Amended) A level having a pair of opposed parallel rails, a web perpendicular to said rails and connecting the rails together, a vial-receiving opening in said web, said vial-receiving opening having opposed notches therein, said opposed notches having an end wall and spaced side walls at right angles to said end wall, at least one vial mounted in said vial-receiving opening, the opposed ends of the vial being mounted in the opposed notches, said vial comprising an outer wall, said outer wall being straight, [and] cylindrical and having a central axis, an inner cavity within said vial, said inner cavity being curved and having a central axis which is curved and spaced away from the central axis of the outer wall, and orienting means are provided in said outer wall to permit proper orientation and mounting of said vial in the notches

in said vial-receiving opening, the inner cavity is curved in a substantially uniform arc having [an] a single apex and having a uniform axial diameter throughout its length, opposed ends spaced from the apex and opposed spaced sides at an angle of 90 degrees from the apex, the apex of the curved inner cavity is closer to the cylindrical outer wall of the vial than the ends of the inner cavity and wherein a plane tangent to said apex is parallel to said rails, the said cavity is substantially uniform in cross section throughout its length, planes tangent to the sides of the cavity are parallel to each other and at right angles to a plane tangent to said apex, one end of said cavity terminates in an end wall perpendicular to said outer wall, said end wall having inner and outer faces parallel to each other, the other end of said cavity is open and wherein a cap is adapted to close the said open end, said orienting means comprise a pair of keys extending and integral with the outer wall of said vial adjacent said open end, said keys extending in opposite directions away from each other and from said outer walls in a direction away from the inner cavity, said keys adapted to be received in the opposed notches, thereby preventing rotation of the vial when mounted in the level.

20. (Three Times Amended) A level having a pair of opposed parallel rails, a web perpendicular to said rails and connecting the rails together, a vial-receiving opening in said web, said vial receiving opening having opposed notches therein, said opposed notches having an end wall and spaced side walls at right angles to said end wall, at least one vial mounted in said vial-receiving opening, the opposed ends of the vial being mounted in the opposed notches, said vial comprising an outer wall, said outer wall being straight, [and] cylindrical and having a central axis, an inner cavity within said vial, said inner cavity being curved and having a central axis which is curved and spaced away from the central axis of the outer wall, and orienting means are provided in said outer wall to permit proper orientation and mounting of said vial in the notches in said vial-receiving opening, the inner cavity is curved in a substantially uniform arc having

[an] a single apex, and having a uniform axial diameter throughout its length, opposed ends spaced from the apex and opposed spaced sides at an angle of 90 degrees from apex, the apex of the curved inner cavity is closer to the cylindrical outer wall of the vial than the ends of the inner cavity and wherein a plane tangent to said apex is parallel to said rails, the said cavity is substantially uniform in cross section throughout its length, planes tangent to the sides of the cavity are parallel to each other and at right angles to a plane tangent to said apex, one end of said cavity terminates in an end wall perpendicular to said outer wall, said end wall having inner and outer faces parallel to each other, the other end of said cavity is open and wherein a cap is adapted to close the said open end, said orienting means comprise a pair of keys extending from and integral with the outer wall of said vial adjacent said open end, said keys extending in opposite directions away from each other and from said outer walls in a direction away from the inner cavity, said keys adapted to be received in the opposed notches, thereby preventing rotation of the vial when mounted in the level.

21. (Twice Amended) A level as set forth in Claim 20, wherein each of said keys have edge and side walls at right angles to each other, each of said walls having an end edge, said end edges being tangent to the outer wall of the vial with one of said walls being parallel to the [plan] plane tangent to the apex of the cavity, said edge and side wall adapted to abut the end and side walls of the notches.

35. (Twice Amended) A method of making a vial having an outer wall and an inner cavity comprising the steps of forming the outer wall in a straight cylindrical configuration, forming the inner cavity of the vial in a curve, said inner cavity and the outer straight cylindrical wall being formed simultaneously [in a single step].